

5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. “Controlled group” means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words “at least 80 percent” shall be replaced by the words “more than 50 percent” in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a “controlled group of corporations” apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

§ 44.33 Cross reference.

For additional rules pertaining to liability for special (occupational) tax, filing special tax returns, issuance and examination of special tax stamps, and notification of changes to special tax stamps, see subpart D of part 46 of this chapter.

EFFECTIVE DATE NOTE: By T.D. TTB-79, 74 FR 37419, July 28, 2009, § 44.33 was revised, effective July 28, 2009 through July 30, 2012.

§§ 44.34–44.36 [Reserved]

Subpart C—General

§ 44.61 Removals, withdrawals, and shipments authorized.

(a) Tobacco products, and cigarette papers and tubes may be removed from

a factory or an export warehouse, and cigars may be withdrawn from a customs warehouse, without payment of tax, for direct exportation or for delivery for subsequent exportation, in accordance with the provisions of this part.

(b) Tobacco products and cigarette papers and tubes are not eligible for removal or transfer in bond under this part unless they bear the marks, labels or notices required by this part.

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

[T.D. ATF-421, 64 FR 71925, Dec. 22, 1999]

§ 44.61a Deliveries to foreign-trade zones—export status.

Tobacco products, and cigarette papers and tubes may be removed from a factory or an export warehouse and cigars may be withdrawn from a customs warehouse, without payment of tax, for delivery to a foreign-trade zone for exportation or storage pending exportation in accordance with the provisions of this part. Such articles delivered to a foreign-trade zone under this part shall be considered exported for the purpose of the statutes and bonds under which removed and for the purposes of the internal revenue laws generally and the regulations thereunder. However, export status is not acquired until an application for admission of the articles into the zone with zone restricted status has been approved by the district director of customs pursuant to the appropriate provisions of 19 CFR chapter I and the required certificate of receipt of the articles in the zone has been made on Form 5200.14 as prescribed in this part.

(48 Stat. 999, as amended, 72 Stat. 1418, as amended; 19 U.S.C. 81c; 26 U.S.C. 5704)

[T.D. 6961, 33 FR 9491, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28087, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-421, 64 FR 71925, Dec. 22, 1999]

§ 44.62 Restrictions on deliveries of tobacco products, and cigarette papers and tubes to vessels and aircraft, as supplies.

Tobacco products, and cigarette papers and tubes may be removed from a factory or an export warehouse and cigars may be withdrawn from a customs

warehouse, without payment of tax, for delivery to vessels and aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States, subject to the applicable provisions of this part. Deliveries may be made to vessels actually engaged in foreign, intercoastal, or noncontiguous territory trade (i.e., vessels operating on a regular schedule in trade or actually transporting passengers and/or cargo (a) between a port in the United States and a foreign port; (b) between the Atlantic and Pacific ports of the United States; or (c) between a port on the mainland of the United States and a port in Alaska, Hawaii, Puerto Rico, the Virgin Islands, or a possession of the United States; between a port in Alaska and a port in Hawaii; or between a port in Alaska or Hawaii and a port in Puerto Rico, the Virgin Islands, or a possession of the United States); to vessels clearing through customs for a port beyond the jurisdiction of the internal revenue laws of the United States; to vessels of war or other governmental activity; or to vessels of the United States documented to engage in the fishing business (including the whaling business), and foreign fishing (including whaling) vessels of 5 net tons or over. Such deliveries to vessels shall be subject to lading under customs supervision as provided in §§ 44.207 and 44.263. As a condition to the lading of the tobacco products, and cigarette papers and tubes, the customs authorities at the port of lading may, if they deem it necessary in order to protect the revenue, require assurances, satisfactory to them, from the master of the receiving vessel that the quantities to be laden are reasonable, considering the number of persons to be carried, the vessel's itinerary, the duration of its intended voyage, etc., and that such articles are to be used exclusively as supplies on the voyage. For this purpose, the customs authorities may require the master of the receiving vessel to submit for customs approval, prior to lading, customs documentation for permission to lade the articles. Where the customs authorities allow only a portion of a shipment to be laden, the remainder of the shipment shall be returned to the bonded premises of the manufacturer,

export warehouse proprietor, or customs warehouse proprietor making the shipment, or otherwise disposed of as approved by the appropriate TTB officer. Deliveries may be made to aircraft clearing through customs en route to a place or places beyond the jurisdiction of the internal revenue laws of the United States, and to aircraft operating on a regular schedule between U.S. customs areas as defined in the Air Commerce Regulations (19 CFR part 122). Deliveries may not be made to a vessel or aircraft stationed in the United States for an indefinite period and where its schedule does not include operations outside such jurisdiction.

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

[T.D. 6871, 31 FR 48, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28088, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-421, 64 FR 71925, Dec. 22, 1999; T.D. ATF-480, 67 FR 30801, May 8, 2002]

§ 44.63 Restrictions on disposal of tobacco products, and cigarette papers and tubes on vessels and aircraft.

Tobacco products, and cigarette papers and tubes delivered to a vessel or aircraft, without payment of tax, pursuant to § 44.62, shall not be sold, offered for sale, or otherwise disposed of until the vessel or aircraft is outside the jurisdiction of the internal revenue laws of the United States, i.e., outside the 3-mile limit or international boundary, as the case may be, of the United States. Where the vessel or aircraft returns within the jurisdiction of the internal revenue laws with such articles on board, the articles shall be subject to treatment under the tariff laws of the United States.

(72 Stat. 1418, as amended; 26 U.S.C. 5704; 19 U.S.C. 1317)

[T.D. 6871, 31 FR 49, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28088, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 44.64 Responsibility for delivery or exportation of tobacco products, and cigarette papers and tubes.

Responsibility for compliance with the provisions of this part with respect to the removal under bond of tobacco